



IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

KENNETH LEE,
Plaintiff,

v.

ORIGINAL

TRANS HEALTHCARE, INC., d/b/a
HERITAGE PLACE NURSING
HOME and TRANS
HEALTHCARE, INC. TEXAS
EMPLOYEE ACCIDENT PLAN
Defendants.

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CIVIL ACTION NO. _____

3 - 05 CV 1165 - D

PLAINTIFF'S ORIGINAL COMPLAINT
AND JURY DEMAND

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES, KENNETH LEE, Plaintiff, complaining of Defendant Trans Healthcare, Inc. d/b/a Heritage Place Nursing Home (hereinafter referred to as "Trans Healthcare"), and Defendant Trans Healthcare, Inc. Texas Employee Accident Plan (hereinafter referred to as "The Plan"), and for cause of action would respectfully show this Court the following:

I.
PARTIES

1. Plaintiff is an individual residing in Dallas County, Texas.
2. Defendant Trans Healthcare, Inc. d/b/a Heritage Place Nursing Home is a Texas Corporation authorized to do business in the State of Texas. Defendant Trans Healthcare, Inc. can be served by serving its registered agent for service, Mumtaz Farash, 800 – 8th Avenue, Suite 124, Fort Worth, Texas 76104.

3. Defendant Trans Healthcare, Inc. Texas Employee Accident Plan is the benefit plan of which the Plaintiff was a member. The Plan is administered by Providence Risk & Insurance Services, Inc., a Texas Corporation duly authorized to do business in the State of Texas. The Plan may be served by serving its Administrator's registered agent, Deanna Craft, 16414 San Pedro, Ste. 800, San Antonio, TX 78232.

II. JURISDICTION AND VENUE

4. Jurisdiction is conferred upon this Court by Section 502 of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001 et seq. Jurisdiction is proper pursuant to 29 U.S.C. §1132 (1), and 29 U.S.C §§ 1132 (e) & 1132 (f).

5. Venue is proper in this Court because all or part of the cause of action arose in Dallas County, Texas.

III. FACTS

6. Plaintiff Kenneth Lee was an employee of Defendant Trans Healthcare, Inc., d/b/a Heritage Place Nursing Home. On January 15, 2004, Plaintiff Lee was injured in the course and scope of his employment. He was lifting a patient with Ms. Hagar, a co-employee. The co-employee Hagar failed to properly lift the patient, causing Plaintiff to have to suddenly carry the entire weight of the patient. As a result, Plaintiff suffered a torn rotator cuff injury to his left shoulder. Plaintiff felt some soreness in his shoulder, but thought it nothing more than the usual soreness from working a physically demanding job.

8. Early on the morning of January 16, 2004, Plaintiff awoke with pain in his shoulder. Recognizing that he might have sustained an injury from the lifting incident, he called his employer before his daily shift began, and reported the nature and cause of his injury. He told Annie Arquanda, the Assistant Director of Nurses, about the injury of January 15, 2004. He told her he would not be able to work on January 16, 2004, and that he was going to see his family doctor, Alan Kenney, M.D. He also reported the accident and pain to Dr. Kenney. Ultimately, it was determined that Plaintiff had suffered a torn rotator cuff injury to his shoulder; this required a surgery by Dr. J. Teig Port to correct the tear.

9. On January 20, 2004, he submitted an incident report to his supervisor, Flo Brenham.

IV.

DEFENDANT TRANS HEALTHCARE'S NEGLIGENCE

10. Defendant Trans Healthcare, Inc. is a non-subscriber to the Texas Workers' Compensation system, as that term is defined in the TEXAS LABOR CODE. At the time of the Plaintiff's injury, they did not carry a policy of worker's compensation insurance, and thus were not covered under Texas Workers' Compensation law at the time of the injury.

11. Defendant co-employee Hagar was negligent because she failed to properly lift her side of the patient. Her negligence proximately caused the injuries to Plaintiff.

V.

EXECUTION OF A CONTRACT

12. Defendant Trans Healthcare, Inc. provided its employees with an employee benefit plan. The employee benefit plan was called, "The Texas Employee Accident Plan"

(hereinafter, "The Plan"). The Plaintiff and Defendant Trans Healthcare, Inc. agreed upon an employee benefit plan within the meaning of Sections 3(1), (2), (3), (21), 405 (c) (1)(B) and 502 of the Employee Retirement Income Security Act of 1974 (ERISA), to wit 29 U.S.C. §§ 102 (1), (2), (3) and (21), and § 1109 (c) (1)(B) and § 1131. This action is brought under the terms of the above agreement.

13. A contract was executed between the Plan and the Plaintiff as a result of the Plaintiff's employment with Defendant Trans Healthcare, Inc. In particular, the contract provided Mr. Lee with medical and disability benefits under the Plan if he suffered a work-related injury. The Plan was administered by Providence Risk & Insurance Services, Inc.

VI.
DEFENDANT EMPLOYEE ACCIDENT PLAN'S
WRONGFUL BREACH OF CONTRACT

14. Plaintiff alleges that The Plan wrongfully breached the contract to provide benefits to the Plaintiff when he suffered a work-related injury on or about January 15, 2004. Plaintiff was an employee under the terms of the contract. Plaintiff sustained his injury on the job while lifting a patient, performing an act within the scope of his employment. Plaintiff has fully performed or fulfilled the conditions precedent to the contract. To date, Defendant Plan refuses to provide benefits to the Plaintiff, as he is entitled to under the terms of the contract. Defendant Plan's refusal amounts to an abuse of discretion. Plaintiff alleges that Defendant Plan breached the fiduciary duty that it owed to the Plaintiff. Plaintiff hereby sues Defendant Plan for wrongfully refusing him his benefits under the terms of the contract.

VII.

**PLAINTIFF'S DAMAGES ARISING FROM
THE PLAN'S WRONGFUL BREACH**

15. Plaintiff was wrongfully denied benefits under Plan. In particular, he was denied salary benefits and medical expenses. He hereby sues The Plan for damages arising from the breach of this contract.

VII.

PLAINTIFF'S DAMAGES FROM TRANS HEALTHCARE'S NEGLIGENCE

A.

Medical Expenses In The Past

16. As a result of the lifting injury he sustained, Plaintiff medical expenses as follows:

Medical Center of Mesquite	\$ 18,765.65
Southwest Cardiac Associates	25.00
D. Randall Askins, M.D.	423.60
J. Teig Port, M.D., P.A.	3,579.00
Mounir Mekhail, M.D.	960.00
Gemini Digital Imaging	Pending
Alan F. Kenney, M.D.	<u>Pending</u>

TOTAL MEDICAL EXPENSES IN THE PAST	\$23,752.65
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B.

Medical Expenses in the Future

17. In reasonable likelihood, Plaintiff will require reasonable and necessary medical care in the future for his work-related injury, for which he hereby sues Defendants.

C.

Physical Impairment in the Past and the Future

18. As a further result of the injuries Plaintiff sustained in his work-related accident, he has suffered physical impairment in the past; in reasonable likelihood he will continue to

suffer physical impairment in the future. Plaintiff hereby sues Defendants for his past and future physical impairment.

D.
Lost Wages in the Past

19. As a further result of the injuries Plaintiff suffered in his work-related accident, he has sustained lost wages in the past, for which he hereby sues Defendants.

E.
Pain and Suffering & Mental Anguish in the Past and Future

20. As a further result of Plaintiff's work-related injuries, he has sustained pain and suffering, and mental anguish in the past; in all likelihood, he will continue to experience pain and suffering and mental anguish into the future. Plaintiff hereby sues Defendants for his pain and suffering and mental anguish in the past and in the future.

IX.
ATTORNEY'S FEES

21. Plaintiff has found it necessary to hire any attorney to file his ERISA claim. Plaintiff hereby sues Defendant for his reasonable and necessary attorney's fees, pursuant to 29 U.S.C. § 1132(g).

X.
PREJUDGMENT INTEREST

22. Plaintiff is entitled to an award of prejudgment interest, for which he hereby sues Defendants.

XI.
DEMAND FOR JURY TRIAL

23. Plaintiff demands a jury trial on all issues so triable.

PRAYER

WHEREFORE, Plaintiff respectfully requests that the Defendants be cited to appear and answer, and upon final trial of this matter, that Plaintiff have the following:

1. Judgment against both Defendants, jointly and severally, for Plaintiff's damages;
2. An award of reasonable attorney's fees;
3. Costs of court, and prejudgment and post-judgment interest as allowed by law; and,
4. Such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

LAW FIRM OF BARRETT W. STETSON

Barrett W. Stetson

BARRETT W. STETSON, SBN 19178300

The Oaks at Turtle Creek

2929 Carlisle St., Ste. 360

Dallas, TX 75204-1081

Tel: (214) 220-9090

Fax: (214) 220-9112

e-mail address: stetslaw@aol.com

ATTORNEY FOR THE PLAINTIFF

JS 44
(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

KENNETH LEE

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

DEFENDANTS

TRANS HEALTHCARE, INC., d/b/a HERITAGE
PLACE NURSING HOMETRANS HEALTHCARE, INC. TEXAS EMPLOYEE
ACCIDENT PLAN(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

BARRETT W. STETSON TEL. (214) 220-9090
LAW FIRM OF BARRETT W. STETSON
2929 CARLISLE ST., STE. 360
DALLAS, TX 75204-1081

ATTORNEYS (IF KNOWN)

STUART O'NEIL TEL. (214) 672-2136
COWLES & THOMPSON, P.C.
901 MAIN ST., STE. 4000
DALLAS, TX 75202-3793

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX
FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

ERISA: 29 U.S.C. §§ 3, 102, 502; AND 1109 et seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 535 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other		

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

May 12, 2005

Barrett W. Stetson

UNITED STATES DISTRICT COURT